

ABAC

**ABAC Complaints Panel
Determination No: 115/11**

**Confidential Complainant
Product: Fat Yak Pale Ale
Advertiser: Carlton & United Brewers**

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Fran Baum – Member
Debra Richards – Member

23 December 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a billboard advertisement for Fat Yak Pale Ale by Carlton & United Brewers (“the Advertiser”) and arises from a complaint received 15 December 2011.

The Quasi-Regulatory System

2. Alcohol advertising in Australia is subject to an amalgam of laws and codes of practice which regulates and guides the content and, to some extent, the placement of advertisements. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol advertising as quasi-regulation. The most important provisions applying to alcohol advertising are found in:
 - (a) a generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - (b) an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme;
 - (c) certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast; and
 - (d) The Outdoor Media Association Code of Ethics and Alcohol Guidelines which includes provisions about Billboard advertising.
3. The complaint systems operated under the ABAC scheme and the ASB are separate but inter-related in some respects. Firstly, for ease of public access, the ASB provides a common entry point for alcohol advertising complaints.

Upon receipt, the ASB forwards a copy of the complaint to the Chief Adjudicator of the ABAC Panel.

4. The Chief Adjudicator and the ASB independently assess the complaint as to whether the complaint raises issues under the ABAC, AANA Code of Ethics or both Codes. If the Chief Adjudicator decides that the complaint raises solely issues under the Code of Ethics, then it is not dealt with by the ABAC Panel. If the complaint raises issues under the ABAC, it will be dealt with by the ABAC Panel. If the complaint raises issues under both the ABAC and the Code of Ethics, then the ABAC Panel will deal with the complaint in relation to the ABAC issues, while the ASB will deal with the Code of Ethics issues.
5. The complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint was received by ABAC on 15 December 2011.
7. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. This complaint was decided within the timeframe.

Pre-vetting Clearance

8. The quasi-regulatory system for alcohol beverages advertising features independent examination of most proposed advertisements against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for this advertisement [11114].

The Advertisement

9. The advertisement depicts a side view of a large black yak standing still and looking straight ahead in a green field with mountains in the background. There is a pixelated area where the yaks sexual organs are located. On the right side of the advertisement is the text "Matilda Bay Fat Yak Pale Ale" above a 375ml bottle of the product. On the bottom left side of the page is an "Enjoy Responsibly" logo.

The Complaint

10. The complainant argues that:
 - (a) It is inappropriate to use an animal's sexuality and genitals to promote alcohol consumption and the portrayal is disturbing and ridicules the animal.
 - (b) If the advertiser is attempting to suggest Fat Yak Pale Ale is some type of aphrodisiac this is contrary to Part 1 (c)(i) of the ABAC Code.

The Code

11. Section (c) of the ABAC provides that advertisements for alcohol beverages must:
 - c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
 - (i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success.

The Advertiser's Comments

12. The Advertiser responded to the complaint and questions posed by the Panel by letter received 23 December 2011. The points made by the Advertiser in relation to the advertisement were:
 - a. Foster's Group Limited (**Foster's**) has an excellent advertising compliance track record and is an original and long-standing signatory to the Alcohol Beverages Advertising Code (**ABAC**). We take our obligations in relation to responsible consumption of alcohol extremely seriously and believe that the advertisement in question (**Fat Yak Pale Ale**) does not breach the ABAC. We disagree with the comments made in the complaint.
 - b. Matilda Bay Brewing Co is a craft brewery, with Fat Yak Pale Ale one of its lead beers. Craft beer is experiencing exceptional growth, as consumers respond to the broad range of tastes and the quality of small-batch beer. It was founded in Fremantle WA in 1984, and continues to operate its own, smallscale brewery in Victoria. Matilda Bay is an irreverent brand that carries a sense of humour through its communication to balance its premium product quality messages. To Matilda Bay's consumers, beer retains the experiences of discovery and fun. This tongue-in-cheek attitude is evident in Matilda Bay's product names, each having its own story, for example Dogbolter Dark Lager, Alpha Pale Ale, Bohemian Pilsner, Dirty Granny Cider and Fat Yak Pale Ale.
 - c. The advertisement in question is a photo of a yak, standing proud, in a field by himself. The area around his genitalia is pixelated. The image alludes to a Yak that is well-endowed, not one with erect sexual organs. That the advertisement represents erect sexual organs is a subjective observation on the part of the complainant. We appreciate that this advertisement has a theme of innuendo, with a subtle joke linked the name of the beer. We feel strongly that this creative is in line with prevailing community standards on taste and decency, and does not breach the AANA Code of Ethics or the ABAC. The billboard has been in use in all Australian capital city markets over the past two years, with

this the first complaint received. This provides us with significant confidence that we are within the boundaries of socially acceptable humour.

- d. There is no content or wording that can be interpreted as contributing to a significant change in mood or the achievement of sexual success. There is no journey that brings the audience to a conclusion whereby consumption or the presence of the Fat Yak brand leads to a positive outcome of a sexual nature. We do not accept the premise that the yak's genitals are erect. We believe that the reasonable person's outtake is instead of a well-endowed yak. Secondly, the image is of a yak, not a human. We feel that any extrapolation from animals to humans is beyond the reasonable person's view.

The Panel's View

13. This complaint raises issues under both the AANA Code of Ethics and the ABAC. The Code of Ethics issues go to portrayal of sexuality. As explained earlier, Code of Ethics matters are determined by the ASB and this determination will not deal with these concerns.
14. Rather, this determination deals with that part of the complaint which argues that the ad suggests that the alcohol product is an aphrodisiac. This concern brings into play Part 1 section (c)(i) of the ABAC. This section of the ABAC provides that alcohol ads are not to suggest that the presence or the use of alcohol may contribute to a change in mood and contribute to the achievement of sexual success. The key element of the section is that of causation *i.e.* can it be fairly said that the ad suggests that alcohol is causing the achievement of sexual or other success.
15. The Panel does not believe the ad breaches the section (c) standard. In reaching this conclusion, it is noted:
 - The depiction of a Yak that is suggested to be either well-endowed and/or has an erection is a play on the product's name, "Fat Yak";
 - The advertisement, which is a still image of a Yak by itself in a field that is suggested to be either well-endowed and/or has an erection, does not depict a change in mood or the achievement of sexual or other success;
 - Concerns as to the portrayal of sexuality are issues relating to the AANA Code of ethics and are not matters for the ABAC Panel (refer paragraph 13 above).
16. Accordingly, the complaint is dismissed.